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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/653,555	09/01/2000	William O. Mattick	P_3009.002 Ames	5462

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EXAMINER

SMITH, JEFFREY A

ART UNIT

PAPER NUMBER

3625

DATE MAILED: 12/04/2002

Please find below and/or attached an Office communication concerning this application or proceeding.

# Office Action Summary

Application No.

09/653,555

Applicant(s)

MATTICK ET AL.

Examiner

Jeffrey A. Smith

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– The MAILING DATE of this communication appears on the cover sheet with the correspondence address –  
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

## Status

- 1) ☐ Responsive to communication(s) filed on \_\_\_\_.
- 2a) ☐ This action is FINAL. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

## Disposition of Claims

- 4) ☒ Claim(s) 1-6 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-6 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_ are subject to restriction and/or election requirement.

## Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 01 September 2000 is/are: a) ☐ accepted or b) ☒ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on \_\_\_\_ is: a) ☐ approved b) ☐ disapproved by the Examiner.  
If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

## Priority under 35 U.S.C. §§ 119 and 120

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).  
a) ☐ All b) ☐ Some \* c) ☐ None of:  
1. ☐ Certified copies of the priority documents have been received.  
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_.  
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).  
\* See the attached detailed Office action for a list of the certified copies not received.
- 14) ☒ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).  
a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

## Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892) 4) ☐ Interview Summary (PTO-413) Paper No(s) \_\_\_\_.
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948) 5) ☐ Notice of Informal Patent Application (PTO-152)
- 3) ☒ Information Disclosure Statement(s) (PTO-1449) Paper No(s) \_\_\_\_ 6) ☐ Other: \_\_\_\_\_

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## **DETAILED ACTION**

### ***Information Disclosure Statement***

The information disclosure statement filed 8 February 2002 fails to comply with 37 CFR 1.98(a)(2), which requires a legible copy of each U.S. and foreign patent; each publication or that portion which caused it to be listed; and all other information or that portion which caused it to be listed. It has been placed in the application file, but the information referred to therein has not been considered.

Specifically, the non-patent literature documents could not be located in the file.

### ***Drawings***

This application has been filed with informal drawings which are acceptable for examination purposes only. For example, drawing figures and legends are rough, and Figures do not observe the required margins.

Applicant is required to submit a proposed drawing correction and a formal correction of the noted defects. Applicant is required to submit drawing corrections promptly. Drawing objections may no longer be held in abeyance.

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*Claim Rejections - 35 USC § 103*

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claim 6 is rejected under 35 U.S.C. 103(a) as being unpatentable over The American Council for an Energy-Efficient Economy (ACEEE) (as evidenced by "First-Ever Green Guide to Cars and Trucks Helps Buyers Choose Most Environmentally Friendly Vehicles That Meet Their Needs", PRNewswire, March 17, 1998 [Dialog File 813, Accession No. 1244108] (hereafter "First-Ever"); Nauman, Matt: "How Green is My...? Gas Hogs Get Their Comeuppance in a Book that Rates Cars, Trucks, Minivans and Sport-Utilities by Their Impact on Environment", San Jose Mercury News, Edition: Morning Final Section: Drive, page: 1G, April 3, 1998 [Dialog File 634, Accession No. 09593075] (hereafter "How Green"); and [www.aceee.org](http://www.aceee.org) [archived at [www.archive.org](http://www.archive.org) December 2, 1998] (hereafter "aceee.org")) in

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**view of Official Notice regarding the awarding of physical awards.**

ACEEE, a non-profit concern independent of the automotive industry (see both "First-Ever" and "How Green"), established a web site (see both "First-Ever" and "How Green") which identifies and ranks cars and trucks for environmental performance. The company (which is considered an e-commerce company because of its web site presence) developed an objective environmental performance rating system based upon its own algorithm (see "How Green"'s discussion of the manner in which the scoring curve was established) driven by quality assured data provided by both the industry and the federal government (see "First-Ever"'s discussion of emissions certificates and fuel economy data which automakers report to the EPA). The data is processed into ratings in accordance with said algorithm to identify the most environmentally sensitive vehicles (see "How Green"'s discussion of emissions standards, health costs of emissions and global warming, lifetime pollution and greenhouse-gas emissions, and vehicle mass).

ACEEE's web site identifies the rating system and the identification of vehicles with the highest ratings (see "aceee.org").

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ACEEE facilitates the promotion of the results by companies (see "How Green"'s discussion of automakers taking the information to heart and the hope that automakers will begin marketing certain vehicles as being picked a best bet).

ACEEE further identifies different vehicles by brand name and model (see "aceee.org"); produces the ratings in timed relationships with the beginning of the model year of the industry (see "How Green"'s discussion of ACEEE's intent to produce the ratings annually); and, by virtue of its web presence, has implemented its communication plans to identify the top environmental performers to consumers.

ACEEE establishes a national recognition for its ratings and its awards (it is noted that ACEEE is a national council). ACEEE facilitates the use of the rating system and use of the awards by the manufacturer in its promotional activity (see "How Green"'s discussion of its hope that automakers will take the information to heart and begin marketing certain vehicles as being picked a best bet).

ACEEE develops and implements its web site and press releases (see "aceee.org") which facilitates the recognition and acceptance for its rating system; and facilitates the advertisement and identification of top-rated vehicles to induce consumers to buy the top-rated vehicles (as discussed above).

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The Examiner notes the many advantages either explicitly or implicitly present in ACEEE's method. For example, ACEEE rates vehicles in terms of how good or how bad they are for the environment (see "How Green"); enables consumers to select and buy the vehicles which most closely meet their concerns (see "First-Ever"'s discussion of "empower[ing] consumers to make greener choices"); influences consumer choice (see "First-Ever"); and encourages automakers to provide cleaner more fuel-efficient vehicles (see "First-Ever").

ACEEE does not provide the step of presenting physical awards. It is noted, however, that ACEEE does refer to "Best of" listings (see "First-Ever"), "top 12 overall" listings (see "First-Ever"), "top-rated" listing (see "How Green"), "10 greenest vehicles" listing (see "How Green"), "best bet" (see "How Green"). These lists and labels are considered forms of awards, albeit not physical awards, per se.

However, Official Notice is taken that it is notoriously well-known that many organizations who endeavor to rank items of the type provided by ACEEE confer a physical award for the achievement of certain levels of success. Examples would be blue ribbons awarded for success at a local fair or gold medals awarded for success at a sporting event. It would have been obvious to one of ordinary skill in the art to have provided the

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method of ACEEE to have included the step of presenting a physical award in order to have bestowed a lasting physical tribute to those which are determined to be "Best of" by ACEEE, for example.

Claims 1-4 are rejected under 35 U.S.C. 103(a) as being unpatentable over The American Council for an Energy-Efficient Economy (ACEEE) (as evidenced by "First-Ever Green Guide to Cars and Trucks Helps Buyers Choose Most Environmentally Friendly Vehicles That Meet Their Needs", PRNewswire, March 17, 1998 [Dialog File 813, Accession No. 1244108] (hereafter "First-Ever"); Nauman, Matt: "How Green is My...? Gas Hogs Get Their Comeuppance in a Book that Rates Cars, Trucks, Minivans and Sport-Utilities by Their Impact on Environment", San Jose Mercury News, Edition: Morning Final Section: Drive, page: 1G, April 3, 1998 [Dialog File 634, Accession No. 09593075] (hereafter "How Green"); and [www.aceee.org](http://www.aceee.org) [archived at [www.archive.org](http://www.archive.org) December 2, 1998] (hereafter "aceee.org")) in view of Official Notice regarding the awarding of physical awards and further in view of Official Notice regarding the obtaining of data over the Internet.

ACEEE does not detail the manner in which the quality assured data is obtained.



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However, Official Notice is taken that it is notoriously well-known for publicly available data to be obtainable via the Internet. The data obtained by ACEEE concerns certain data reported to the EPA. It would have been obvious to one of ordinary skill in the art to have provided the method of ACEEE, as modified, to have included the step of obtaining the quality assured data already obtained from the EPA via the Internet in order to facilitate the data's procurement.

Claim 5 is rejected under 35 U.S.C. 103(a) as being unpatentable over The American Council for an Energy-Efficient Economy (ACEEE) (as evidenced by "First-Ever Green Guide to Cars and Trucks Helps Buyers Choose Most Environmentally Friendly Vehicles That Meet Their Needs", PRNewswire, March 17, 1998 [Dialog File 813, Accession No. 1244108] (hereafter "First-Ever"); Nauman, Matt: "How Green is My...? Gas Hogs Get Their Comeuppance in a Book that Rates Cars, Trucks, Minivans and Sport-Utilities by Their Impact on Environment", San Jose Mercury News, Edition: Morning Final Section: Drive, page: 1G, April 3, 1998 [Dialog File 634, Accession No. 09593075] (hereafter "How Green"); and [www.aceee.org](http://www.aceee.org) [archived at [www.archive.org](http://www.archive.org), December 2, 1998] (hereafter "aceee.org")) and Official Notice regarding the obtaining of data over the

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Internet and Official Notice regarding the awarding of physical awards as applied to claim 1 above, and further in view of bbbonline.org [archived at [www.archive.org](http://www.archive.org), January 23, 1998] (hereafter "BBBOnLine").

ACEEE, as modified, does not provide the step of establishing links between its web site and the web sites of automotive e-commerce business.

"BBBOnLine" teaches establishing links between [www.bbbonline.org](http://www.bbbonline.org) (which serves as a validating web service) and e-commerce businesses to permit visitors to the e-commerce web sites to obtain independent verification of ratings and awards (see "BBBOnLine": "BBBOnLine for Consumers: What to Look For").


It would have been obvious to one of ordinary skill in the art to have provided the method of ACEEE, as modified, to have included the step of establishing links to automotive e-commerce businesses (in the spirit of the teaching of "BBBOnLine") in order to allow e-commerce businesses, of the type addressed by ACEEE, the ability to show their commitment to the environment to their customers (see "BBBOnLine": "BBBOnLine for Consumers: What to Look For").

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Any inquiry concerning this communication or earlier communications from the examiner should be directed to Jeffrey A. Smith whose telephone number is 703-308-3588. The examiner can normally be reached on M-F 6:30am-6:00pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Wynn Coggins can be reached on 703-308-1344. The fax phone numbers for the organization where this application or proceeding is assigned are 703-305-7687 for regular communications and 703-308-3691 for After Final communications.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is 703-308-1113.

  
Jeffrey A. Smith  
Primary Examiner  
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December 2, 2002